

State of Montana

REPORT TO THE LEGISLATURE

Sunset Review

BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

The 1977 Sunset Law terminates the Board on July 1, 1981. This review provides information to assist the Legislature in making the decision to terminate, modify or continue the Board.

This report presents ten areas for Legislative consideration (page 24) including:

- ▶ Current laws defining the audiology profession's role in selling hearing aids and use of the word audiologist.
- ▶ Two separate boards involved with the licensing of individuals working in the hearing health care field.
- ▶ Changes in laws relative to definition of aides, association appointments, and board membership.
- ▶ Board inspection of audiometers.

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May 1980

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The Legislative Audit Committee
of the Montana State Legislature:

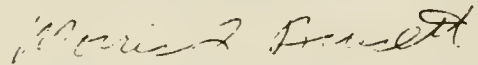
Herein transmitted is our sunset performance review of the Montana Board of Speech Pathologists and Audiologists. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1981.

The review focused upon an examination of board operations. It does not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Professional and Occupational Licensing, the members of the Board of Speech Pathologists and Audiologists, the president of the Montana Speech, Language and Hearing Association, the Governor's Office of Budget and Program Planning, and the director of the Department of Social and Rehabilitation Services.

We wish to express our appreciation to the members of the board and to the director of the department and his staff for the assistance they provided during the review. We also wish to thank the members of the speech pathology and audiology professions for assistance they gave us.

Respectfully submitted,

A handwritten signature in cursive script, reading "Morris L. Brusett".

Morris L. Brusett, C.P.A.
Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

		<u>Term Expires</u>
Connie R. Simonsen, Chairman	Billings	1980
Kathleen Sauvageau, Vice Chairman-Secretary	Belgrade	1982
Charles H. Lewis, Member	Great Falls	1980
Dr. Charles Parker, Member	Missoula	1981
Shirley DeVoe, Member	Helena	1981

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Ed Carney	Director
Pat King	Administrative Assistant

Chapter I

BACKGROUND

This sunset performance review addresses state regulation of speech pathologists and audiologists by the Board of Speech Pathologists and Audiologists, a state board within the Department of Professional and Occupational Licensing.

REPORT OBJECTIVES

The 1977 Legislature enacted legislation terminating numerous regulatory boards and agencies, including the Board of Speech Pathologists and Audiologists. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must objectively examine the need for the regulatory board/agency and the Audit Committee must offer recommendations for reestablishment, modification, or termination.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

- (a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?
- (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?
- (c) Is there another less restrictive method of regulation available which could adequately protect the public?

- (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
- (e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
- (f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the profession, and interested members of the public.

In defining the intent of the sunset law the legislature provided for periodic examination of each board/agency every six years. In this way, the legislature will be in a better position to ensure that agencies and their programs exist only to be responsive to state residents' needs. The sunset law terminates the board on July 1, 1981.

SPEECH PATHOLOGIST AND AUDIOLOGIST PROFESSIONS

Speech pathology comprises the study and treatment of all aspects of functional and organic speech defects and disorders. The speech pathologist provides services to persons through examination, diagnosis, and management of their speech and language disabilities. The pathologist is college educated and obtains clinical experience. Using this training and specialized

equipment to evaluate the extent of speech disability, the pathologist determines the basis for speech impairment and develops a program for treating such disorders.

The audiologist is also a college educated professional who provides diagnostic and corrective services to individuals with hearing disorders. The audiologist's primary responsibilities are: identifying persons who have impaired hearing, measuring the extent of the hearing impairment, assessing patient future needs, and planning a program of rehabilitation.

Both professions make appropriate referral for medical attention and maintain contact with specialists in the medical profession.

Two occupations within these fields do not require licensure. Speech pathology aides and audiology aides normally assist speech pathologists and audiologists in their work. The Office of Public Instruction (OPI) also employs speech technicians (aides) to fill vacant speech pathologist positions when no licensed individuals are available. These aides have completed at least 175 hours of academic work and possess a bachelor's degree in their respective areas of expertise. All aides must practice under the direct supervision of licensed speech pathologists and audiologists. Their duties can include: initial evaluation, screening, diagnosis, testing, and prescription therapy. The degree to which aides participate in these duties varies according to job requirements, expertise, and

supervisor discretion. Supervising pathologists and audiologists retain full legal and ethical responsibility for aide services provided to clients. Currently, there are approximately 30 aides working in Montana.

Two other licensed professions are involved in hearing health care. Otologists or otolaryngologists, physicians specializing in the study and treatment of the ear, provide consultation to audiologists concerning management of hearing problems. Hearing aid dispensers determine and measure the range of human hearing through physical examination of the ear and by using an audiometer, a device which registers hearing loss.

In addition to the licensed professionals above, certain teachers are certified by OPI through special education endorsement to be teachers of the deaf.

Recent figures indicate that over 30,000 speech pathologists and audiologists are employed nationally and 309 are presently licensed in Montana--266 speech pathologists and 43 audiologists. A majority of the licensees, approximately 60 percent, work in the public school system. However, others are found in a wide variety of settings such as: community speech and hearing centers, Easter Seal centers, hospitals, rehabilitation facilities, special clinics, public health departments, university speech and hearing centers, and private offices.

Chapter II

BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

INTRODUCTION

In 1969, Florida became the first state to create a speech pathology and audiology licensing board. At present, 31 states have enacted similar legislation to establish speech pathology and audiology licensing laws. The Montana Board of Speech Pathologists and Audiologists was created in 1975 to provide for the licensing and regulation of speech pathologists and audiologists. The present speech pathologist and audiologist practice laws set the standards and qualifications required for licensure in these professions. The board is responsible for ensuring that these standards are met and the board performs the following functions as determined from the Montana Codes Annotated (MCA):

1. Evaluate applicant qualifications for licensure and supervise the examination of qualified persons.
2. Grant licenses to persons meeting all requirements for licensure and authorize the department to issue licenses to qualified individuals.
3. Investigate persons engaging in practices which allegedly violate statutory provisions.
4. Conduct hearings when necessary and deny, suspend, or revoke licenses when unprofessional conduct is detected.
5. Adopt rules necessary to carry out the statutes.

6. Cause the prosecution and enjoinder of all persons violating the licensing laws.
7. Renew licenses of speech pathologists and audiologists biennially.
8. Develop methods of documentation which demonstrate licensees have obtained continuing education required for license renewal.

BOARD OPERATIONS

Structure

The board consists of five voting members. Four members must be residents of Montana for at least one year and must have provided services to the public, taught, or performed research in speech pathology or audiology for at least 5 years immediately preceding their appointment. At least two of these four members must be licensed speech pathologists and at least two must be licensed audiologists. The fifth member is a public member who is a consumer of speech pathology or audiology services but who is not licensed by the board.

Board members are appointed by the Governor from separate lists of nominees submitted by the Montana Speech, Language and Hearing Association (MSHA). These appointments are not subject to Senate confirmation. The board chooses from its members a chairman, vice-chairman, and secretary.

Board members are allocated \$25 per day compensation while engaged in the business of the board. In addition, members receive actual travel expenses as provided by law.

The board is required by law to hold at least one meeting each year. Over the past four-year period, the board has averaged six meetings per year. During 1979, the board met five times.

Staffing and Funding

The board is attached to the Department of Professional and Occupational Licensing for administrative purposes. The department provides administrative support to the board in the form of secretarial, legal, budgeting, and accounting services but the board is autonomous in decision-making functions with respect to the licensing process. The department provides the board with a part-time assistant who spends approximately 10 percent of available time working for the board. The assistant's administrative duties include:

- Setting up and maintaining all of the board's files in the office in Helena.
- Sending out applications to individuals requesting them.
- Sending licenses to qualified persons and renewal notices to previously licensed persons.
- Advising the board of any correspondence and assuring that all members receive necessary and pertinent information.
- Publishing annually a current list of licensee names and addresses and sending a copy of this list to each licensee.
- Taking minutes at board meetings.
- Performing other necessary secretarial and clerical functions.

The board is funded from an account in the earmarked revenue fund. Revenue for the fund is derived from the collection of fees charged to licensees. The board may set fees between the minimum and maximum amounts established in the statutes. The current fees charged by the board are indicated in Illustration 1. The fees are near the statutory minimum in all cases.

FEE SCHEDULE

<u>Type of Fee</u>	<u>Amount</u>
Initial Application Fee.....	\$40
License Fee.....	25
Replacement Fee.....	10
Renewal Fee.....	25
Late Fee (10%/month not to exceed total of)....	50
Temporary License Fee.....	10

Source: Department of Professional and Occupational Licensing

Illustration 1

The following illustration shows the revenues, expenditures, and fund balance over the past four fiscal years.

BOARD FINANCES

<u>Fiscal Year</u>	<u>Revenues</u>	<u>Expenditures*</u>	<u>Fund Balance</u>
1978-79	\$4,460**	\$3,439	\$13,260
1977-78	7,500	4,300	12,239
1976-77	8,965	4,338	9,039
1975-76	7,230	2,818	4,412

*Includes prior year expenditures, adjustments, and accruals.

**Decreasing revenues are attributable to biennial renewal.

Source: Montana Financial Reports

Illustration 2

BOARD GOAL AND OBJECTIVES

The sunset law requires each board under review to define its goals and objectives. The Board of Speech Pathologists and Audiologists states that its goal and objectives are as follows:

GOAL:

To assure the public of the highest possible quality of Speech Pathology and Audiology services by issuing licenses and improving professional standards to protect the citizens of the state.

OBJECTIVES:

1. To license approximately 150 applicants per year, develop guidelines for continuing education, and adopt rules to effectively administer the law.
2. To provide written responses to all written inquiries, within 15 days of each board meeting.
3. To review 100% of all pending applications for either probationary or full licensure as Speech Pathologists or Audiologists at each board meeting.
4. To maintain files for 100% of all probationary and provisional licensees for future completion of qualifications for full license.
5. To maintain files for 100% of all fully licensed individuals.
6. To advise 100% of all licensees of renewal status and dates.
7. To renew 100% of all licensees within 15 days of receipt of renewal fees.
8. To publish a list of 100% of licensees annually and to furnish the list to 100% of licensees and public as requested, as per legal requirement.

9. To provide for annual review of rules and hold hearings when adopting, amending, or deleting current rules.
10. To provide for four board meetings per year or more as needed. One meeting per year in conjunction with MSHA at an agreed site and one meeting per year outside of Helena.
11. To investigate 100% of all complaints concerning licensees.
12. To conduct hearings, complete with records and minutes, when necessary.
13. To make recommendations to the Governor for changes of public benefit.
14. To assure professional contact with the Montana Speech, Language and Hearing Association and the Office of Public Instruction by advising both groups of meeting dates and places and establishing liaison with both groups. Board meetings are open to the public.
15. To meet with the public, consumer, or licensee, upon request, to discuss critical and crisis situations at a time agreeable to all parties.
16. To provide reciprocity licensing for all applicants whose current license credentials are equal to or greater than licensure requirements for this state board.
17. To provide guidelines for continuing education as outlined by law.
18. To monitor professional ethics of licensed Speech Pathologists and Audiologists as noted in the Rules and Regulations.

BOARD FUNCTIONS

Examination

Board rules require applicants to take the written national examinations offered through the Educational Testing Service (ETS). A separate examination is given for each profession. The examinations are given three

times per year through different entities who are required to follow ETS guidelines to insure proper examination security measures. These entities are most often university centers who monitor the test and provide the actual examination supervision. The examination dates are determined by ETS and the sites are chosen according to geographic distribution of examinees. Examinations may be taken anywhere, even out-of-state.

The examinations are comprehensive and cover all areas of speech pathology and audiology work. The board currently utilizes the pass/fail criteria of the American Speech, Language and Hearing Association (ASHA). Examinees must obtain a score which meets or exceeds the 20th percentile of the national testing population to pass. Therefore, this score varies from year to year but has stabilized in recent years at a score of approximately 600 out of a possible 800 points. The ETS examination may be waived if the applicant can present proof of a current license in a state which has standards equivalent to or greater than those of Montana or holds the certificate of clinical competence of ASHA. The ETS grades the examinations but it is the applicant's responsibility to assure that the test score is forwarded by ETS to the board.

Pass/fail statistics for applicants taking the national examination could not be accurately compiled

from board records. All licensees must take the examination but only those who request results to be sent to Montana are on file with the board. Thus, pass/fail statistics would be of little value since conclusions would be based on incomplete data.

Education

Applicants for full speech pathology and audiology licensure must meet specialized academic training and professional experience requirements. These statutory requirements include:

- Completion of the application form.
- Completion of specific Academic Requirements, the accumulation of 90 hours of academic credit from accredited colleges or universities providing course study in normal aspects of human communication, development and disorders, and clinical techniques for evaluation and management of such disorders.
- Completion of the Academic Clinical Practicum, a minimum of 300 hours of supervised clinical experience with individuals who present a variety of communication disorders; this experience must be obtained within the applicant's training institution or in one of its cooperating programs.
- Completion of the Clinical Experience Year, the equivalent of 9 months full-time professional employment in which bona fide clinical work has been performed in the Major Professional Area (speech pathology and/or audiology) in which the license is being sought. This experience is obtained under the sponsorship of a speech pathologist or audiologist who is licensed in the profession in which the applicant is working and seeking a license.

--Successful completion of the national examination.

It must be noted that under each of the above headings, Academic Requirements, Academic Clinical Practicum, and Clinical Experience Year, respectively, the required college courses, specific hours of experience, and number of employment hours are explicitly defined in the rules. Generalized requirements have been stated here in the interest of brevity.

Licensing

Since speech pathology and audiology are two distinct professions, applicants only receive a license in the field for which they are qualified. However, nothing restricts individuals from obtaining a license and practicing in both professions. Licenses are renewed biennially for both odd and even numbered years. Renewal is dependent upon each individual's initial licensing year. The administrative rules for the board establish five separate license categories. These license types include: full license, provisional license, probationary license, temporary license, and inactive license.

The full license allows licensees to practice their respective professions without restriction. The provisional license is, in essence, a modified grandfather provision of the law which requires individuals to obtain a full license within a designated period of time. Prior to July 1, 1976, provisional licenses were

granted to individuals who were holders of a bachelor's degree with a major in speech pathology or audiology, had accumulated 175 hours of clinical practicum, and had worked in Montana as speech pathologists or audiologists for at least one academic year. Those granted such status are required to complete the academic, clinical practicum and examination requirements for licensure within six years after the law's enactment on July 1, 1975. The provisional license is renewable but will cease to exist as of July 1, 1981 and no further licenses will be granted by the board using this provision of the law. At the present time, 14 licensees hold provisional licenses. If the board is satisfied that these individuals meet all of the licensure requirements within the specified time period, provisional status will be dropped and full licensure status will be granted.

The probationary license is issued to qualified persons who have fulfilled all requirements pertaining to academic credits and clinical practicum but who have not completed and are working in their Clinical Experience Year. It is issued for only two years and is nonrenewable except at the discretion of the board. Individuals must submit a standard application form to the board which indicates the applicant's desire to obtain probationary licensure. The probationary license allows qualified individuals to perform all of

the functions pursued by fully licensed practitioners but requires that licensed individuals provide them with supervision and act as sponsors of their work. It also gives probationary licensees sufficient time to take the national examination.

Temporary licenses are issued to nonresidents who wish to provide speech pathology and/or audiology services in Montana but who do not wish to be permanently licensed in this state. Any nonresident not licensed under Montana law but who is licensed in another state which has licensure requirements at least equivalent to Montana law or who is the holder of the ASHA certificate of clinical competence may offer speech pathology or audiology services in Montana. However, such services must be offered for no more than thirty days in any calendar year and must be performed in cooperation with a speech pathologist or audiologist licensed in Montana.

An inactive license is issued to licensees who have moved out of state but wish to maintain their license status with Montana. It is also issued to those persons who have temporarily stopped practicing in either profession. Prior to license expiration, the individual must make a written application to the board for such status. In order to restore full licensure, the individual must pay the current renewal fee and demonstrate evidence of continuing education require-

ments. The following illustration summarizes the licensing activities of the board.

LICENSING STATISTICS

<u>Year</u>	<u>Speech Pathology</u>		<u>Audiology</u>	
	<u>New</u>	<u>Renewed*</u>	<u>New</u>	<u>Renewed*</u>
1979	23	34	8	2
1978	30	180	11	33
1977	49		3	
1976	214**		35**	

*Two year renewal.

**Initial Licensing Year.

Source: Department of Professional and Occupational Licensing

Illustration 3

Reciprocity

The board also licenses speech pathologists and audiologists by granting licenses through reciprocity. The requirements for reciprocity are: the applicant must hold a Certificate of Clinical Competence of the American Speech, Language and Hearing Association (ASHA) or its current equivalent in the area for which he is applying for licensure or the applicant must present proof of a current license in a state which has standards equivalent to or greater than those of Montana. Over the past four years, three individuals have applied for reciprocal licensure but no one has been licensed in this manner.

Complaints and Letters of Inquiry

The board is charged with handling all complaints filed against licensed speech pathologists and audiologists or persons practicing the profession without a

license. At present, no complaint register exists since no formal complaints have been received or filed by the board. However, several letters of inquiry have been directed to certain individuals who have failed to follow proper licensing procedure or who have lacked proper qualification for licensure. These letters were used as a means of clarification and resolution of individual problems for the board.

EXEMPTIONS TO REGULATION

By law, anyone who practices the profession of speech pathology or audiology must be licensed by the board. However, there are certain persons exempt from the law (section 37-15-103, MCA). These persons include:

1. Any person performing the activities of a speech pathologist or audiologist employed by a federal government agency who does such work solely within the confines or under the jurisdiction of the organization in which they are employed.
2. Any person who is engaged in the activities and services of a student and is pursuing a course of study in speech pathology and audiology at an accredited or approved college or university. These activities and services must be a part of the student's supervised course of study and must not accrue any fees. Such persons shall be designated by the title speech pathology or audiology intern or other title clearly indicating the training status of the individual.
3. Persons from other states who offer speech pathology or audiology services in Montana if such services are performed for no more than five days in any calendar year and if the services are performed in cooperation with a licensed speech pathologist or audiologist.

4. Persons who secure a temporary license subject to board limitations, are not residents of Montana and do not have Montana licensure but are licensed under the law of another state which has established licensure requirements at least equivalent to Montana licensing law or who hold the ASHA certificate of clinical competence in speech pathology or audiology or its equivalent may offer speech pathology and audiology services in Montana for no more than 30 days in any calendar year if such services are performed in cooperation with a licensed speech pathologist or audiologist.
5. No persons holding a class A certificate from the Conference of Executives of American Schools of the Deaf shall be restricted by the speech pathology and audiology licensing law from performing the functions for which they qualify.
6. No persons holding certificates of Montana registration as a hearing aid dealer shall be restricted by the speech pathology and audiology licensing law from performing those functions for which they qualify.

Chapter III

OTHER REGULATION

In Montana, the only state agency with regulatory powers over speech pathologists and audiologists is the Board of Speech Pathologists and Audiologists.

FEDERAL REGULATION

The state of Montana, through its Department of Social and Rehabilitation Services (SRS) purchases speech pathology and audiology services for citizens entitled to public assistance. This activity is carried on under Title XIX of the Social Security Act, which is commonly referred to as Montana's Medicaid Program. In order to receive Medicaid funds to pay for these services, federal regulations require speech pathologists and audiologists to be licensed or have ASHA certification.

In addition, the state receives federal funds for payment of speech pathology and audiology services through the Special Education Program of the Office of Public Instruction (OPI). Under Public Law 94-142, the Education of the Handicapped Act, federal funds are dispersed to the state's Special Education programs to pay for services provided by speech pathologists and audiologists to handicapped children in the Montana public school system. Speech pathologists and audiologists are required by OPI to have a Montana license in order to work in Montana public schools.

The Montana Foundation for Medical Care (MFMC) acts as a review organization for all speech pathology claims being submitted to SRS for Medicaid funding. MFMC has developed screening criteria which are used to review the appropriateness of speech pathology claims. In a similar manner, audiology claims for Medicaid funding are submitted for review through a licensed audiologist in the Department of Health and Environmental Sciences.

SELF-REGULATION

Professional associations exert considerable influence on the actions of speech pathologists and audiologists. The American Speech, Language, and Hearing Association (ASHA) has played an important role for these professions, both nationally and in Montana. Prior to the creation of state licensing boards, ASHA provided standards for professional service and developed a code of ethics for the professions. At the present time, the board incorporates some of ASHA's certification requirements into its rules and regards the certificate of clinical competence to be sufficient for Montana licensure under reciprocity.

The Montana Speech, Language, and Hearing Association (MSHA) also exerts influence on speech pathologists and audiologists. The MSHA is a voluntary state association of approximately 170 members or 55 percent of the licensees and is affiliated with ASHA. The association

is used as a voting mechanism for selecting nominees to the board. The licensing law gives MSHA the authority to select nominees for gubernatorial appointment to the board. One of the association's primary functions is directed toward the establishment of continuing education programs and development of training sessions for licensees.

Three other organizations have influence on the professions of speech pathology and audiology in Montana. The Easter Seal Society for Crippled Children and Adults contracts with rural school districts and local professionals to purchase speech pathology and audiology services for school-age children. It also provides therapy to adults with communication and hearing disorders. OPI employs speech pathologists and audiologists to help handicapped students with speech and hearing impairments. Also, professional services are provided to Native Americans who qualify for benefits through the Indian Health Service. When working for these agencies licensed professionals must comply with the employment requirements of each organization.

OTHER STATE REGULATION

At present, speech pathologists and audiologists are licensed in 31 states. The form of regulation is similar in each case and in most cases the regulations are administered by a single board similar to the

Montana Board of Speech Pathologists and Audiologists.
The following table compares various facets of Montana's
regulations to those of other states:

REGULATIONS OF OTHER STATES COMPARED TO MONTANA'S

<u>Entity</u>		<u>United States</u>	<u>Montana</u>
Licensing Entity	25	Board of Examiners of Speech Pathology and Audiology	Board of Speech Pathologists and Audiologists
	2	Speech Pathology and Audiology Examining Committee	
	2	Department of Education	
	1	Department of Health	
	1	State Board of Health	
Board Size	4	No designated board members - administered by department	5 members
	15	Boards - 4-6 members	
	12	Boards - 7-12 members	
Housed Within What Agency	19	Independent or Department of Licensing	Department of Professional and Occupational Licensing
	9	Department of Health	
	3	Department of Education	
Board Makeup	2	Boards - Profession only	4 members from profession
	26	Boards - Majority of board from profession	
	3	Boards - No members from profession	
Education or Experience	27	Masters degree	Masters degree or equivalent
	1	Bachelors degree	
	3	60 hours	
Examination	13	States - Written only	Written
	13	States - Written and oral	(Oral option)
	3	States - Practical	
	2	States - None	
Public Membership	13	Boards - Public Members	One public member
	18	Boards - No public members	
Continuing Education	4	States - Required	Required*
	27	States - None	
Renewal	19	States - Annual	Biennial
	6	States - Biennial	
	6	States - None	

*Continuing Education is required by statute and the board is currently establishing its program.

Source: Compiled by the Office of the Legislative Auditor

Illustration 4

Chapter IV

AREAS FOR LEGISLATIVE CONSIDERATION

The design and effectiveness of certain aspects of the regulatory process may warrant legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Speech Pathologists and Audiologists.

The areas for consideration include:

1. Hearing Aid Dispensers and Audiologists.
2. Use of the Word "Audiologist."
3. Regulatory Duplication.
4. Definition of Aides.
5. Board Inspection of Audiometers.
6. Association Appointments.
7. Continuing Education.
8. Board Membership.
9. Administrative Functions.
10. Other Areas of Consideration.

In addition to the above aspects, we noted another area that warranted consideration. Prior to completion of our review, the board took the following action concerning advertising.

1. The board rules stated that speech pathologists and audiologists must not advertise. Attorney Generals in other states have issued opinions declaring that similar prohibitions of advertising by optometrists and chiropractors were unconstitutional. For the same reason set forth in these opinions Montana's rules prohibiting advertising of speech pathologists and audiologists goods and services were likewise unconstitutional. The

board submitted rule changes, removing this section from the board rules. The change took effect November 6, 1979.

A sunset review of hearing aid dispensers is being conducted at the present time and the first three areas for consideration discussed below are also addressed in the report on the Board of Hearing Aid Dispensers.

HEARING AID DISPENSERS AND AUDIOLOGISTS

Since the 1975 creation of the Board of Speech Pathologists and Audiologists, hearing aid dispensers and audiologists have questioned each other's role in the hearing health care field. Audiologists are university educated professionals with all but a few having at least a Masters Degree in Audiology. The practice of audiology is defined in Montana law as follows:

"The application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory behavior related to hearing impairment."

The use and fitting of hearing aids by audiologists has increasingly become a part of the practice of audiology. However, it is this area of practice which causes problems between dispensers and audiologists. To sell a hearing aid, an audiologist must be licensed by the Board of Hearing Aid Dispensers. Audiologists have reasoned that they should not have to be licensed by a second board to engage in what they were trained to do. Hearing aid dispensers maintain that all who

sell hearing aids should be required to demonstrate their proficiency in actual practice, not merely through academic training.

A recent Montana Attorney General's opinion has clarified the practice areas of audiologists through the following discussion:

1. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser, based upon the exemption of section 37-16-103, MCA. As explained in 37 OP. ATT'Y GEN. NO. 60, this exemption may be enjoyed only if the hearing aids are not sold, a sale including sales at a profit, at cost, or even at a loss.
2. There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser, if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery.
3. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit an aid, whether permanently or for a trial period, without a dispenser's license. No other person not otherwise licensed or within the exemption of 37-16-103, MCA, may do so.

From the foregoing opinion, an audiologist may perform every function except the actual selling of a hearing aid.

The sunset law, 2-8-101(2)(c), MCA, states the following:

No profession, occupation, business, industry, or other endeavor are subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

The law which prohibits audiologists from selling hearing aids does not appear to be designed solely for public protection. The law also protects hearing aid dispensers from the commercial competition of audiologists. We discussed this with dispensers and they noted that, in some instances, audiologists may have a competitive advantage if they were allowed to sell hearing aids as part of their employment with nonprofit institutions or public-supported hearing clinics.

USE OF THE WORD AUDIOLOGIST

Section 37-15-102(5), MCA, states that the definition "Audiologist means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words 'audiologist' . . . or any similar title or description of service." Under licensing section 37-15-301(2), MCA, the law states that "No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed . . ." with the Board of Speech Pathologists and Audiologists.

At the present time, five Montana hearing aid dispensers are using the title "Certified Hearing Aid

Audiologist." The dispensers use the title because the dispensers have successfully completed a specific course of study as members of the National Hearing Aid Society (NHAS). The rules of the Board of Hearing Aid Dispensers recognize the title and restrict its use to those certified by NHAS. No mention is made of the audiology law.

Use of the word "audiologist," separately or with other words in a title, is prohibited by Montana's speech pathology and audiology law unless the person is licensed as an audiologist. Although hearing aid dispensers in the performance of their duties are exempt to the speech pathology and audiology law, there is no exemption for dispensers from provisions of the law against using the term "audiologist." The Board of Speech Pathologists and Audiologists should work with the Board of Hearing Aid Dispensers to insure that dispensers comply with the statutes relating to the use of the title "audiologist," and request that any reference to the title be removed from the rules of the Board of Hearing Aid Dispensers.

REGULATORY DUPLICATION

Currently, the Board of Hearing Aid Dispensers and the Board of Speech Pathologists and Audiologists are involved with the licensing of individuals engaged in testing, measurement, evaluation, and modification of human hearing. To modify human hearing, licensees of

both boards are legally qualified to fit hearing aids on individuals who require them. Only those licensed by the Board of Hearing Aid Dispensers may sell hearing aids. Licensed audiologists desiring to sell hearing aids must, therefore, be licensed by two boards. To eliminate duplication and to consolidate regulation in the hearing health care field, consideration might be given to combining the Board of Hearing Aid Dispensers and the Board of Speech Pathologists and Audiologists into one regulatory entity, yet maintaining the identity of each occupation.

DEFINITION OF AIDES

According to statutory definitions, speech pathology and audiology aides are persons meeting the minimum requirements established by the board and who work directly under the supervision of a licensee. The board has yet to establish such requirements; therefore, there is no basis for determining what duties aides are qualified to perform. Direct supervision is also left undefined. Without the inclusion of specific aide duties and the requirements for direct supervision, confusion will persist as to which duties aides may legally perform and what constitutes direct supervision. For example, section 37-15-301(2), MCA, states "No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed . . ." Currently, speech pathology and

audiology aides, under the direct supervision of licensed professionals, are performing all of the duties practiced by licensees. Further, the Office of Public Instruction (OPI) has developed its own regulations with regard to the qualifications of speech pathology aides, thus undertaking board responsibility to establish minimum qualifications for aides.

The board, by adopting minimum requirements, would provide for a review of all speech pathology and audiology aide work in a consistent manner and all aides could be monitored by the board through the licensing law.

In this regard, board members stated that the board is in the process of revising its rules and is developing a registration procedure for aides and their supervisors. OPI has indicated its willingness to come under these proposed revisions.

BOARD INSPECTION OF AUDIOMETERS

Professionals regulated by the board who use audiometers to measure the extent of hearing loss are not required to show proof of calibration of their instruments. Consequently, the public has no assurance that some of the audiometers in use by practitioners are calibrated to established standards which enables such equipment to make accurate hearing tests. The Board of Hearing Aid Dispensers has a requirement for periodic calibration of audiometric testing equipment

for its licensees although it does not presently enforce this requirement.

During our review of the board, we found that voluntary calibration of audiometers was performed in an inconsistent manner. Since no time requirement for calibration currently exists, the board cannot be fully confident of the accuracy of audiometric testing. Without periodic inspection of calibration of audiometric testing equipment, the effectiveness of the board in protecting the public's interests is limited. The board could require certification of calibration or accuracy verification as a part of its license renewal.

ASSOCIATION APPOINTMENTS

Section 2-15-1615(2), MCA, states that "the board consists of five members, four of whom shall . . . be appointed by the governor from names submitted to him by the Montana Speech and Hearing Association." Two recent state supreme court decisions have nullified such statutory appointment processes in South Carolina and Washington. The courts ruled that the statutes requiring board members to be appointed from lists submitted by the state's chiropractic associations were an unconstitutional delegation of governmental authority to a private organization. The delegation of such authority under Montana's speech pathology and audiology law should, therefore, be reviewed.

Currently, public members are also being appointed to the board from a separate list submitted to the Governor by the association. There is no provision in the law which requires a list of public members to be submitted or for public members to be appointed by the Governor from such a list. In fact, the law is not clear as to how the public member shall be appointed. Statutory provision concerning nomination and appointment of public members should be reviewed.

CONTINUING EDUCATION

Montana's law (section 37-15-309, MCA) states that "the board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice." This statute was enacted in 1975. At present, these standards and procedures have not been established. Sufficient time has elapsed for the board to complete its continuing education procedures. Establishment of these programs and documentation of licensee participation should be finalized as quickly as possible.

BOARD MEMBERSHIP

Gubernatorial appointments to the board are not subject to Senate confirmation. The Senate confirms the appointments to some of the state's boards and commissions. In addition, during the 1977-79 biennium

of sunset, the Legislative Audit Committee recommended the appointments to regulatory boards be subject to Senate confirmation.

ADMINISTRATIVE FUNCTIONS

As a result of various sunset review of boards within the Department of Professional and Occupational Licensing, two separate administrative areas have consistently been identified. These areas are:

- Reporting requirements of boards.

- Automated license records.

Since individual documents will be formulated concerning these administrative areas, a limited discussion of each is presented.

Reporting Requirements of Boards

Montana currently has a reporting requirement, section 2-7-102, MCA, which requires all state governmental agencies to submit biennial reports to the Governor. However, these reports when published contain very limited information. A report containing more specific information (i.e., number of applicants and examinations, pass-fail rate, receipts and expenditures, goals and objectives, complaints, dispositions of complaints) would increase the usefulness of the report and allow the legislature to more easily monitor a board's activity.

Automated License Records

At the present time, most licensee records are kept manually by the boards within the department. In

addition, new and renewed licenses are manually typed by administrative secretaries. An alternative is to automate license records through a department-wide system. The automated system could print renewal notices and also licenses. In addition, such automated records could be used to generate statistical reports on the licensee populations. Additions, deletions, and corrections to the licensee files could also be made easily.

OTHER AREAS OF CONSIDERATION

In previous reviews of regulatory boards in Montana, the aspect of uniformity among boards in reimbursement of board members and setting licensing fees commensurate with the cost of regulation was often discussed. These issues were not addressed in this review since Board of Speech Pathologists and Audiologists members are reimbursed similar to other regulatory boards and the board has the authority to set fees between statutory minimums and maximums based upon cost.

